

Leighton Andrews AC / AM  
Y Gweinidog Gwasanaethau Cyhoeddus  
Minister for Public Services



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: LF/LA/0596/15

Jocelyn Davies AM  
Chair, Finance Committee

3<sup>rd</sup> July 2015

Dear Jocelyn

**Finance Committee Report following its Inquiry into the Consideration of Powers:  
Public Services Ombudsman for Wales**

Thank you for your letter of 3 June regarding the Finance Committee's findings following your inquiry into the powers asked for by the Ombudsman.

Given that the Committee is to consult further on a draft bill, the Government will want to comment further once we have seen the draft clauses. For the moment we would like to comment on recommendations 3 and 9.

**Recommendation 3:** If the draft Bill includes powers for the Ombudsman to be able to carry out 'own initiative investigations', we would hope that the Committee would consider carefully how this new power may work in practice.

We have said that if the Ombudsman were to choose to exercise a new power to initiate 'own initiative investigations', then we feel that there should be clear criteria which are open and transparent as to what would trigger an investigation and when. The Ombudsman has said that he would limit the application of such a power; we feel that it would be important for the Ombudsman to explain how he would do this. In addition, we think that it would be important for there to be some engagement between the Ombudsman, the AGW, other Commissioners and Welsh Ministers prior to any own initiative investigation being undertaken by the Ombudsman, so that there is sharing of information and an exchange of intelligence to inform the scope of the work. The exercise should also be planned and coordinated carefully so as to ensure that there is no duplication and that the impact on contributors is minimised.

Were an own initiative power to be provided to the Ombudsman we do have concerns that this might shift the emphasis of the work of the Ombudsman from being a champion of the individual complainant to one of carrying out system reviews and critiques. There is a danger that the Ombudsman's unique position of persuading and collaborating with public bodies to improve services could be jeopardised were the relationship to change to one where the Ombudsman might be seen as more as an enforcer or policeman. We are sure that the Committee is very conscious of the fact that the key role of the Ombudsman is to stand up for individuals where the system and normal processes have failed them. We feel that there should be careful thought before proceeding with any possible dilution of that role.

**Recommendation 9:** The Government can see there is value in the introduction of a role for the Ombudsman to capture data and analyse complaint handling across Wales which in turn will assist in making and targeting improvements in the public sector. We would welcome this role.

It is also envisaged the Ombudsman could have a role in setting statutory guidance or issue a model complaints policy that would be binding on public bodies. We suggest that the Committee should approach this proposal with caution as there is a possible conflict with those public sector bodies that already have a statutory obligation to have complaints policies and procedures in place. We would invite the Committee to consider either excluding these bodies or finding another way to ensure that the Ombudsman, in issuing statutory guidance, makes allowance for the obligations these bodies already have.

In addition, the Committee will be aware of course that for this power to be effective there may be a requirement for investment in new technology and systems. Any standardisation that requires new capital investment or leads to increased new revenue expenditure would be a particular challenge in these times of financial constraint.

There are other recommendations (10, 12, 13, 14, 15, 17, and 18) not associated with the proposed new powers and which are aimed at Welsh Government. I have attached an appendix to this letter with our responses to them.

### **Auditor General for Wales**

My principal interest in the Auditor General's work relates to his audit and corporate improvement duties rather than his value for money studies. The AGW has produced some recent studies, such as those on scrutiny and financial planning which have identified examples of good practice. However, it is not clear that these reports have focused on the areas which would contribute most to our understanding of the opportunities for securing public value for public money. It would assist all those involved – the Welsh Government, the Assembly, the wider scrutiny community and the public bodies which are the subject of the reports – if there were a clearer plan for the preparation of such reports and a clearer basis for the identification and prioritisation of this work. I recognise the independence of the role which the Auditor General occupies but greater engagement could enable greater value to be derived from his work on such studies.

Yours sincerely,

A handwritten signature in black ink that reads "Leighton Andrews". The signature is written in a cursive style. Below the signature is a horizontal line that ends in an arrowhead pointing to the right.

**Leighton Andrews AC / AM**  
Y Gweinidog Gwasanaethau Cyhoeddus  
Minister for Public Services

## Appendix 1

### **Welsh Government's responses to recommendations 10, 12, 13, 14, 15, 17, and 18 of the Finance Committee Report following its Inquiry into the Consideration of Powers: Public Services Ombudsman for Wales.**

**Recommendation 10** asks that any model complaints handling policy should be supported by a training programme and promotional materials for staff in public bodies.

The Welsh Government would certainly endorse that approach but does note that this would be a matter for the Ombudsman to advocate.

**Recommendation 12** asks that for patients using services provided in Private Patient Units and who have no ability to complain to any external body about their treatment, the Welsh Government should work with Health Inspectorate Wales to resolve this apparent anomaly and report back to the Committee.

HIW has confirmed that the only Private Patients Unit in Wales (the Bridgend Clinic) is regarded as a NHS site. Patients who are unhappy with a service can complain to the Health Board. If a complainant is unhappy with the Health Board's response to their complaint they would have access to the Public Service Ombudsman for Wales. If HIW were to receive a complaint relating to care in the Bridgend Clinic they would direct the complainant to the Health Board complaint processes in the first instance and have previously done so in the past.

In addition, there is a process for raising concerns about private sector providers which is akin to the NHS complaints procedure, i.e. that the provider, if they are members of the Independent Healthcare Advisory Service (IHAS), will investigate the matter first then, if they cannot resolve the issue in accordance with the IHAS Code of Practice, the complainant may access the IHAS adjudication service. The Government agrees that where the Ombudsman needs to conduct a complaint investigation that includes care provided by a private health supplier, he (the Ombudsman) should be able to do so, providing the cost is not met from the public purse.

**Recommendation 13** asks the Welsh Government to liaise with the UK Government on the European Directive on Alternative Dispute Resolution and how it will affect the Ombudsman's role.

The Government is aware of the European Directive on Alternative Dispute Resolution and that the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 made by the Secretary of State as the Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to matters relating to consumer protection, implement most of its provisions. It is understood that the remaining provisions of the Directive will be implemented in future regulations.

The principal obligation on the UK Government under the Directive is to ensure that ADR, provided by a certified ADR entity, is available for any dispute concerning contractual obligations between a consumer and a trader, although the use of ADR is not mandatory under the Directive. The Alternative Dispute Resolution for Consumer

Disputes (Competent Authorities and Information) Regulations 2015 set out certain requirements that an applicant ADR entity must satisfy to be approved as such.

Whether the PSOW applies to be an ADR entity for the purposes of the regulations is a matter for the PSOW.

**Recommendation 14** asks the Welsh Government to respond to the Law Commission's 2011 Report.

This is a report produced for Parliament which was presented to Parliament pursuant to section 3(2) of the Law Commissions Act 1965. The Welsh Government was asked to contribute to the one reference to the PSOW which officials provided. However, we understand that the UK Government did not submit a final response (including to the Welsh Government element) to the Law Commission report. The matter was not pursued by Welsh Government as the UK Government has embarked on a wider consultation about the role of the Ombudsman with a view to creating a single Ombudsman for England which has superseded the Law Commission report.

**Recommendation 15** asks the Welsh Government to explore the issue of the competence of the Assembly in relation to the statutory bar, stay provisions and referral of a point of law as part of future devolution discussions.

It is the Government's view that as more powers are devolved to Wales these matters should be discussed when appropriate.

**Recommendation 17** asks the Ombudsman to liaise with the Welsh Government on the issue of protecting the title 'Ombudsman'.

Whilst the Government has no objection to the recommendation, we continue to take the view that as Welsh Ministers are subject to the provisions of the Ombudsman powers our involvement should be kept to a minimum. We also think this is a non-devolved issue of titles which is the prerogative of the Intellectual Property Office. It may be appropriate for the Ombudsman to raise the matter with the Ombudsman Association.

**Recommendation 18** asks Welsh Government to consider mandatory training for elected members as part of their consideration of forthcoming legislation on Local Government reform.

The 'Reforming Local Government: Power to Local People White Paper', published for consultation in February 2015, proposed that elected members should be required to attend appropriate training to equip them to fulfil their roles. The Welsh Government is considering responses to the consultation and will publish its response in due course.